UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD

HOSPITAL HERMANOS MELENDEZ, INC. EMPLOYER

and

UNION GENERAL DE TRABAJADORES LOCAL 1199, SEIU PETITIONER CASE NUM.: 24RC-090556

EXCEPTION TO HEARING OFFICER'S REPORT AND RECOMMENDATION ON CHALLENGED BALLOTS

Comes now, Unión General de Trabajadores, Local 1199, SEIU, through its undersigned counsel and very respectfully states and prays:

The Hearing Officer's Report and Recommendation on Challenged Ballots fails to mention and discuss the testimony given by Ms. Jessica Perez-Morales, an RN assigned to Intensive Neonatal Care Unit (NICU) at Hospital Hermanos Melendez. She explained in detail how she was verbally admonished by the Head Nurse Ms. Ana Quintero and her Supervisor Mrs. Marla Garcia. In detail she informed that she was first admonished by the Head Nurse and the Supervisor and suspended from her employment for ten (10) days as a result of an incident reported by Ana Quintero, Head Nurse, for using the cell phone during her working shift. She transcript pages 199-207. Obviously, her testimony which was not rebutted by any witness presented by the employer, clearly demonstrates that Ana Quintero, Head Nurse, had direct participation in the disciplinary procedures that culminated with the suspension of Ms. Pérez-Morales.

Furthermore, the Performance Evaluation and Evaluation of Competencies of Ana Quintero, Head Nurse for the year 2011. Petitioner's Exhibits 19(A), 19(B), 20(A) and 20(B) corroborates that Ms. Quintero not only supervises

RN, but, also is directly involved in the disciplinary procedure that resulted in the suspension of RN Jessica Pérez-Morales.

On the other hand, we call the attention to ten (10) Exhibits submitted by the Petitioners of Employee's Performance Evaluation of the following Head Nurses:

Cristina Vázquez – Ex. 5(A) and 5(B) Ana Ramos – Ex. 8(A) and 8(B) Carmen Colón – Ex. 9 (A) and 9(B) Jackeline Espinosa – Ex. 11(A) and 11(B) Ex. 14(A) and 14(B) Sol Rivera – Gisela Calderón – Ex. 13(A) and 13(B) Ex. 15(A) and 15(B) Sonia Rivera – Ex. 16(A) and 16(B) Elizabeth Cosme – 9. Anabel Cintrón – Ex. 18(A) and 18(B) Ex. 19(A) and 19(B) 10. Ana Quintero –

This evidence of yearly Employee's Performance Evaluation indicates that these Head Nurses on a daily basis had the power and authority to directly oversee the work done by nursing staff, which included RN's and LPN's. Please examine items number 9, 10, 11, 12, 13, 16 and 19 of said Performance Evaluations of the Head Nurses.

We call your attention to the corresponding Exhibits of the Employee's Competency Evaluations of the following Head Nurses:

Cristina Vázquez – Ex. 6(A), Ex. 6(B)
 Ana Ramos – Ex. 7 (A), Ex. 7(B)
 Jackeline Espinosa – Ex. 10(A), Ex. 10(B)
 Gisela Calderón – Ex. 12(A), Ex. 12(B)
 Elizabeth Cosme – Ex. 17(A), Ex. 17(B)
 Ana Quintero – Ex. 20(A), Ex. 20(B)

The evidence of the yearly Employee's Competency Evaluations clearly indicates that these Head Nurses are supervisors of the nursing staff and they responsibly direct said nursing staff in their departments with independent judgments to perform those supervisory duties. They are accountable to management for the performance of duties of their nursing staff. Please examine Part VI – Knowledge and Skills in Carrying Out Procedures items #7, 14, 15, 16 and 18 of the evaluations submitted as Petitioner's Exhibits.



WHEREFORE, PETITIONER respectfully request that this Honorable Board determines that the Head Nurses whose votes were challenged are not eligible to vote since they exercised supervisory functions as determined by section 2(11) of the Act.

Respectfully, submitted on February 8, 2013 on San Juan, PR.

I hereby certify that a copy of this Motion was notified on this same date to:

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